DECISION OF THE STATE SUPREME COURT. RELEASE OF MESSRS. BOOTH AND RYECRAFT

NARRATIVE OF THE GLOVER RESCUE.

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From The Milecules Sentind, Feb 6.

The decision of the Supreme Court of Wisconsin, pronounced on Saturday last, discharging S. M. Booth and John Rycraft, two citizens of this State from the fine and imprisonment to which they and been sentenced by Judge Miller, after Court and one free Fuglitre Slave Act, is a matter of 'noo deep and serious import to be lightly passed over, or dismissed without further remark. Regarding that decision as fraught with important consequences to the great cause of Constitutional Right's and Human Liberty; as setting up a barrier agair at any further invasion of those rights by the graspir g and domineering spirit of Slavery; and as conferring immortal honor upon the Court which proneunce d and the State which sustains this righteous judgment, we have thought the present a proper occasion to tay before our readers a succinct narrative of the cause, the progress and the issue of the Glover Resc of Themson this incity.

Early in Marc'n last, a negro, bruised, bleeding and manacied, we shought to this city, in castody of Deputy U. S. Marshal Cotton, and ledged in our County in the state of the efforts of the United States officers to keep their secret, the fact speedily transpired. The circumstances, too, attending the capture, came out. As the story flew from mouth to mouth, he waves of popular excitement began to rise; wan gathering groups on every concer attested Mesurehile interest in this novel case. It was soon known that brutel and unnecessary violence had been used to arrest the man, upon the charge of being a relive, and a writted habeas corpus applied for and obtained from the Judge of the County Court. The Sheriff mast find and the supplicity, and a writted habeas corpus applied for and obtained from the Judge of the County Court. The Sheriff mast find a writted habeas corpus applied for and obtained from the Judge of the County Court. The Sheriff mast find a present to stand by the writ of habeas corpus and the right of trial by jury; and night—arrived upon the ground, adding fuel to the fast-viring flame. At this critical juncture, too, came the report that the writ of habeas corpus would not be obeyed, and the suspicion was strengthened, that the negro was to be carried back into Savery, as he had been brought to the Milwaukee jail, by sheer force and without warrant of law. Then it was that, by an irrestible impulse, and without concert, or premeditation, a rush was made for the jail, the doors battered down, the prisoner released, placed in a wagon and burried beyond the reach of pursuit, amid the applauding shouts of sympathizing thousands. Such is the brief history of the rescue of the alleged fugitive slave Joshun Glover. The breaking of the jail, and the forcible release of Glover, were offenses in the eye of the law and in the estimation of

cure the arrest of S. M. Booth, accused of being a ring-leader in the rescue, by a warrant from United States Commissioner Smith. An examination followed, and Mr. Booth was held to bail, to appear and maswer the complaint at the next term of the United States Court. He gave bail, but shortly afterward was surrendered by his sureties, in order that a writ of habeas corpus might be sued out, in his behalf, before Judge Smith, of our State Supreme Court. The writ was granted, argument had upon it, and Mr. Booth discharged; the Judge helding that the commitment was insufficient, and the Fugitive Slave Act itself, under which the proceeding was had, un-

dissented as to that part of Judge Smith's opinion, which held the Fugitive Slave Act to be unconwhich held the Fugitive Slave Act to be unconwhich held the Fugitive Slave Act to be unconMeantime the U. S. District Court, Jadge Miller presiding, commenced its summer term at Madison, and the Grand Jury found Indictments against the Booth. Ryoralt and others, for their participation in the rescue of Obver. Upon those Indistricts, and by order of the Judge, Mr. Booth was again arrested. He went to joil, and his coursel once more invoked the interposition of our State Sarvense Court. It was denied, mainly upon the ground that the jurisdiction of the U. S. Court had attached, and that comity required that the State Court should not interfere until the Federal Court had hear's the case and pronounced its judgment. Thereupon Mr. Beeth gave ball to appear and stand his trial. The feall turn of the U. S. District Court came on. Mr. Beeth was confined to his bed by severe illness and his case went over. John Ryersft, howeve was tried under the indictment found against him in convicted, and sentence deferred. In January, the mosth just past, the U. S. Court again convened. The Grand Jury, carefully selected, found new bills of meliciment against Mr. Booth (the old one having been abandoned) and reveral others. An attempt was flade to quash the indictment, on the ground that the Grand Jury was improperly and unfairly drawn. The motion for that purpose was overruled and the prisoner put upon his trial. The feeble hands of the U. S. Disniet Attorney were strengthened.

and the prisoner put upon his trial. The feeble hands of the U. S. District Attorney were strengthened for the eccasion by the employment of able cornies, whose scal was stimulated by a liberal fee, as well as by personal and political antipathy toward the accused. Unusual pains were taken to get a Jury whose opinions of the Fugitive Slave Act would not stand in the way of a conviction. The presiding Judge threw his official weight into the scales against he prisoner.

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stand in the way of a conviction. The presiding Judge threw his official weight into the acide against the prisoner.

The widence showed that Mr. Booth had been among the most active in get iog up the meeting at the Court House Square, had been prominent in all the proceedings then and thereshout, and had been in close proximity to the wagon in which Glover was hurried out of the city. There was, however, not a particle of proof to connect him with the actual jail-breaking and jail delivery, or to show that he was one whit more guilty than any other of the two or three thousand citizens who "countenanced" and applanded the escape. But the Judge held that enough and more than enough had been sroved to convict the defendant under the law, and of that law it was for him, and not the Jury to judge. The Jury, fettered by the positive directions of the court, and the majority of them, as we believe, in the conscientions discharge of their supposed duty, found a verdict against the prisoner. Motious were made in arrest of Judgment, and for a new trial. The form of the indictment was challenged, the sufficiency of the proof disputed, and strong evidence offered that one, at least, of the jurors had prejudged the case. But all in vain. The Judge overraided the motions, and hartened to pronounce sentence. Mr. Booth was condemned to one month's imprisonment, \$1,000 fines, and costs of prosecution—\$451 01. Mr. Rycraft to \$200 fine and ten days' imprisonment, \$1,000 fines, and costs of prosecution—\$451 01. Mr. Rycraft to \$200 fine and ten days' imprisonment. Immediately after sendence, both prisoners were conducted to our County jail, and there confined.

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The accordance of the court of the State, and this time not in vain. A writ of hoose corpus was granted, and in cheditance to the prisoners of accordance in the state, but most numerical, and in chedicine to the remains of the prisoners, in charge, or the product of the State, and this

cannot and will not be tolerated with a her borders. Kidnepping finds no favor with her Courts, no protection in her jails, no countenant among her people. Wiscensin is and will remain the first free State, and while she claims no right and che rishes no desire to intermedde in the domestic affects of her sister sovereignities, he will at least as affect and exercise at all times and at every haze; the power to protect her own citizens, and to graintain and defend, in all their integrity, the artiful first formula by any survey.

OPINION OF JUSTICE SMITH.

In the matter of the petition of John Rycraft for a writ of Habean Corpus and to be discharged from imprisonment; and in the matter of Sherman M. Booth.

Booth.

The facts in these two cases are essentially the same, and, so far as the observations, which I feel called upon to make, may be uttered, they will be regarded as applying to both, and therefore, for the sake of convenience, reference will be made to the petition of Rycraft only.

On the application of Sherman M. Booth, at the last term of this Court, for a writ of habeas corpus, no copy of the indictment was presented, but only a copy of the warrant upon which he had been arrested, which recited merely that he had been indicated under the Act of Congress of 1850, for aiding the escape of one Joshua Glover, Ac. This was an ordinary bench warrant, to bring in a defendant to answer to an indicement found in the United States District Court, and it appeared to us that we ought not, (and, indeed, warrent, to bring in a defendant to answer to an inciciment found in the United States District Court,
and it appeared to us that we ought not. (and, indeed,
without an inspection of the indictment we could
not!) interfere with the regular action of that Court,
but were bound to presume that if the indictment,
when at the proper time it should be brought up for
examination, faised to present a case of which that
Court had jurisdiction, or charged no offense at all,
the Court in which it was formed would so decide,
and that all such questions were preliminarily within
the proper scope of the power of that Court. But
now the case is different; all those questions have
been properly urged, and without avail; and the petitioner comes before us and shows, by the return of
the officer, that he has been pressed on to a conviction and sentenced to imprisonment, and is now actually imprisoned, within this State, and that the sole
authority therefor is a transcript of the record of such
conviction.

onviction.

The first, the fundamental question which the case presents, is: Has this Court the power to inquire into the legality of the authority by which the prisoner is

held!

It seems to me that the solution to this question is
to be found in a few simple, elementary propositions,
which require little or no proof or argument to sustain them.

in them.
It is the cuty of Government to protect and secure
e rights of the citizen, among which is the right to

It is the cuty of Government to protect and secure the right of the citizen, among which is the right to liberty.

This duty of the Government is to be measured only by the extent of the individual right, and it is bound to provide means adequate to the end in view. If the Government be complex, the means may be distributed and the obligations of duty divided, but not so as to fall short of the object to be accomplashed.

Ours is a complex system, with distributed powers to each of its parts, but all its parts constituting an entire sovereignty, and so of course in duty bound as a whole to furnish complete protection.

Whatever powers and duties are not delegated or assigned to one department or branch of the entire sovereignty, must remain in the other.

If the one be made up of delegated and the other for received powers, the duties assigned to the former can only be coextensive with the powers delegated, and the duties of the latter must be commensurate with the powers reserved, and those powers and with the powers reserved, and those powers of the former.

The Federal Government is one of delegated powers.

e former.
The Federal Government is one of delegated powers, the State Government one of reserved powers. The former competent to act only within its prescribed bouncary; the latter exercising all the functions of sovereignty which have not been delegated

The power to guard and protect the individual liber-ty of the citizen, is one of the powers reserved to the States. It was never granted to the Federal Gov-ertment, (except in a very few prescribed cases which have no bearing upon the present inquiry,) has never been claimed for it, but always conceded to the States.

If, therefore, it is the duty of the State to guard the

If, therefore, it is the duty of the State to guard the individual liberty of its citizens, it must necessarily have the right and the power to inquire into any authority by which that liberty is attempted to be taken away. But the power to inquire, includes the power to decide. The right to demand by what authority such imprisonment is attempted, implies the obligation of the person imprisoning to respond. The right to demand such authority on the one hand, implies on the other the duty to exhibit it.

Again, the States have delegated to the Federal Government the power to imprison its citizens, in certain cases, but in none other. So far, then, as that Government acts upon the power thus delegated, the States cannot interfere to protect its citizens, but in every other case, they not only have the power, but it is their solenn duty to interpose their authority. As the power by which the Federal Government can implient, is a delegated power, it is bound to show, in every case where it imprisons, that it is acting upon some power delegated. It must be "nominated in "the bond."

The Constitution of the United States is the deed of grant, expressed by written charter, of all the powers delegated to the Federal Government. The States

The Constitution of the United States is the deed of grant, expressed by written charter, of all the powers delegated to the Federal Government. The States severally retain all else of sovereignty, limited only by the local Constitutions prescribed by the people of each.

Therefore, to me it is plain, that when the Federal Government attempts to act in a given case, it is bound to exhibit a case within its prescribed powers; for, were it otherwise, it would involve the assumption of inherent powers, and transcend its charter.

As the States delegated, and the Federal Government took power, the latter is at all times answerable to the former, and may be required to exhibit the deed by which it claims to do, or refuses to perform any given act, when so required by the primary original authority.

In the Constitution of the United States sound policy required the incorporation of a function by which if Covernment, thus created might be such in fact.

cy required the incorporation of a function by which the Government, thus created, might be such in fact, and hence, be enabled to act upon individuals in all of the creative constituent sovereigntes. This could the creative constituent sovereigntes. This could the partment, supreme and independent within its prescribed sphere, whose precess should extend to every cinzen. But in giving up this vital element of sovereignty, the States carefully guarded it, hedged it about with provisions which it was supposed were impassable. They prescribe its extent in words nost carefully selected, whose import could scarcely be mistaken, and beyond which it was supposed, no venturesome mind would rush. "The judicial power "shall extend to all cares in law and equity, arising under this Constitution, the laws and treaties made, "or which shall be made under their authority." &c. The words "extend to might, perhaps, upon the theory of liberal construction be held to be exclusive in their import, were it not for another provision of that instrument which will be presently noticed. But the very selection of the words "extend to, when we consider the extreme caution observed by the members of the convention which framed the Constitution, ought to admonish us against a rash assumption of exclusive jurisdiction. That which merely extends to a particular subject, or class of subjects, cannot, upon any legitimate mode of interpretation, be considered as cemprising the whole of such class to the exclusion of every other power. Several powers may extend to a given class of subjects. But one can comprehend them all. The extension of a power to a subject by no means menges it exclusively within such power.

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But we are relieved from the necessity of criticism upon these words, by another provision of the same instrument, in the following words:

"This Constitution and the laws of the United States made in pursuance thereof, and all treaties made, or which shall be made under the authorities of the United States, shall be the supreme law of the land; and the Judges of every State shall be bound thereby "See."

United States, shail be the supreme law of the land; and the Judges of every State shall be bound thereby. "Ac.

Here is a distinct recognition of the power and duty of State Judges to decide upon and to conform to all the requirements of the Federal Constitution, and the "laws made in pursuance thereof." If the terms "extend to," in a former provision, were intended to be exclusive, and to vest sole and ultimate power in the Federal Courts and Judges, why should the obligation of construction, obedience and conformity be imposed upon State Judges! Why are the Constitution and the laws of the United States "made in "pursuance thereof," made the law of every State, and the State Judges bound thereby, unless those subjects were addressed to the judicial mind and conscience of those officers! And why that careful phrase, when addressed to State Judges, "the laws of "the United States, made in pursuance thereof," unless those officers were required to determine whether or not the laws of the United States were made in pursuance thereof!

or not the laws of the United States were made in pursuance thereof?

It seems to me that here is an express recognition of the judicial power of the States, as extending to all laws of the United States, and a requisition of obedience on the part of State Judges to all the laws of the United States, provided they are made in pursuance of the Constitution of the United States.

This view is strongly fortified by the historical fact that various attempts were made to create and establish one ultimate, sole tribunal, which should finally decide upon all questions which might arise in the course of Federal and State Administration, in regard to be exercise or claim of delegated powers in the Federal Government on the one hand, or reserved powers in the States on the other.

But the project was found to be impracticable in the then posture of affairs, and the attempt was abandoned; the Convention preferring lather to incur the hazard of collision, trusting to the good sense, patriotism and forbearance of the two Governments, and the people, to meet and provide for such emergencies as they might arise, than to create one sole, ultimate tribunal, which might either abstract from and destroy the efficiency of the one, or absorb all the powers of the other; leave the one a mere league, or the other mere dependent colonies of a consell, dated Government, accordingly as direction or bias might chance to be given it by temporary exigencies incident to the commencement of a new and untried system.

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incident to the commencement of a new and untried system.

It is clear, therefore, that the Federal Government can only operate within the prescribed splace marked out by the Constitution of the United States; that Government is at all times anowerable to the States, so far as to bring their action within the charter; that the judicial power of the Union is as much circumscribed by the Constitution as every other depart ment of the Federal Government: that an Act of Congress without the Constitutional sphere, would be no law: that a judicial determination without the Constitutional sphere, would be no law: that a judicial determination without the Constitutional sphere, would be no judgment, sentence, or decree: that of the acts of Congress the State Judiciary are bound to judge, whenever they are brought before it, to as to ascertain whether such acts are made in pursuance "of that Constitution," because that judiciary is bound thereby.

The States never yielded to the Federal Government the guardianship of the liberties of their people. In a few carefully specified instances, they delegated to the Federal Government the power to punish, and so far, and so far only, withdrew their protection. In all else they reserved the power and continued the obligation and duty upon themselves to secure the rights of their citizens, declared to be inalienable, viz: "life, liberty and the pursuit of happiness."

It will readily be conceded that the provision which the people have made in their government, for the protection of these rights in them individually, is found in the Judicial department. That is the arm of sovereignty which they invoke when these rights are individually invaled. Every citizen has the right to appeal to the funcamental character of both sovereignt test to which he is subject, to test the validity of the authority by which his right to liberty is denied. It follows, therefore, that the power which he has the right to invoke in his behalf, must profess the right to inquire into the conformity.

It wo

lows that it must have the right to inquire into such conformity.

It would seem obvious that this power to inquire has rever been surrendered by the States It is reserved to them and the people thereof. Hence it is original in the States. If original, then the appropriate means and instrumentalities incident to its exercise, are alike reserved and original. Among such instrumentalities, the writ of habeas corpus is expecially recognized in the Federal Constitution, and a positive exhibition upon the power of Congress to interfere with its scope and functions, except in specified cases, is carefully inserted. As if it were not enough to restrict the Federal Government to the specifically delegated powers, but to render the power of the States more conspicuous, certain and efficacious, for the protection of individual liberty, all power on the part of Congress, to suspend even, the benefits of the writ of habeas corpus, is expressly denied.

denied.

Therefore, so far as the proceeding under this writ is concerned, it is original, and, from the necessity of the case, the jurisdiction of it is original in the State; and, as Congress cannot suspend its benefits, it cannot abridge the power and jurisdiction of the State; and it is considered to the state of the state o

within the State, no matter by what authority he may claim to act, is bound to obey the writ, because no power on earth can absolve him from his obligation of obedience.

It is sometimes said, that this wris is in the nature of a writ of error, to review the proceedings of an inferior court or magistrate. This is sometimes true. But without stopping here to inquire, whether for the purposes of this writ, the inferior United States Courts be, or be not inferior to State authority, as regards the office of the writ in a proceeding like this, it can hardly partake of the nature of a writ of error. Every sovereign power has a right to inquire into the condition of its subjects, and the authority or causes of their imprisonment. This writ is the appropriate means of such inquiry. When the State uses it to inquire whether the citizen is imprisoned by virtue of a power which it has celegated to another Government, it does not bring the proceedings of that Government into review; it only seeks to inquire whether the case falls within its own reserved powers. If within the scope of the termer, it yields to the parametria tuthority which it has helped to rest. If not, it disposes of the subject matter according to its own forms of procedure.

The obligations of the State and Federal Governments are herein perceived to be mutual and reciprocal. The one to abstain from interference, whenever it perceives the subject matter to be within the stracked jurisdiction of the other, and that other to show that the authority which it claims to exercise is within the powers delegated, and which it may rightfully exercise. There is little danger of troublesome collision so long as each shall be willing to measure its functions by the standard created by the ultimate source of all power. But if, to avoid collision, an absolute unquestioning submission on the one hand is requisite, and on the other a perfect immunity to claim and constitutional means, which they had the wisdom and foresight to provide in the organization of the Governm propriate remedy, in the awakening of inquiry, in a recurrence to primary and fundamental principles, and in a return to the constitutional sphere. And so it will ever be, until one or the other stall rashly and madly rush on to extremities in defiance of constitu-tional remedies.

tional remedies.

The State Judges and Courts are as much bound to support the Constitution and laws of the United States, as are the Federal Courts and Judges. I cam-not yield to the assumption that the former will be less mindful of their oaths and obligations than the not yield to the assumption that refere with the latter, though I can readily perceive why the State Judges may be naturally more mindful of the exact line of demarkation between delegated and reserved powers, because they are under the additional obligation to support the Constitution and rights of the State.

served powers, because they are under the additional obligation to support the Constitution and rights of the States.

If these views be correct, how stands the present case? It is clearly our duty to grant this writ, to inquire into the cause of the prisoners' capture and detention. The return of the respondent sets out such cause. Our next duty is to inquire into this return, in order to ascertain whether the prisoner is held by virtue of any legal authority. It will be conceded that the only rightful authority by which he can be imprisoned must be exercised either by the Government of this State, or by that of the United States. No other earthly power can rightfully interfere with his right to liberty. But it is conceded that he is not held by the authority of this State. The next step in the inquiry is to ascertain whether he is held by any constitutional authority of the Federal Government. Whatever such authority may be, to be of any validity whatever, it must clearly appear to be within powers delegated by the Constitution and the laws of the United States made in pursuance thereof. Any other power attempted to be exercised by any department of the Federal Government would be a manifest acurpation, and of no binding validity. The National Convention that framed the Constitution was exceedingly cautions about conferring criminal jurisdiction upon the National Government: so much so that an enumeration of the crimes for which punishment could be provided was carefully made. Congress has, however, provided for the definition and punishment could be provided was carefully made. Congress has, however, provided for the definition and punishment could be provided was carefully made. Congress has, however, provided for the definition and punishment could be provided was carefully made. Congress has, however, provided for the definition and punishment condition, that is, either the exercise of some power expressing granted, or necessary to the execution of some express power.

I have on another occasion attempted

however, provided for the definition and punishment of numerous other crimes and offenses, as necessarily incident to the due execution of powers expressly granted. But all sgree that the Federal Courts cannot have accordingly prescribed by act of Congress.

Every act of Congress must be conformable to the Constitution, that is, either the execution of some expressly granted, or necessary to the execution of some express power.

I have on another occasion attempted to show that the act of Congress, approved September 18, 1850, c. mmonly called the Fugitive Slave Act, was not within the Constitutional power of Congress. I have no time now to enlarge upon the views there presented. But I may be permitted to say, that after careful research, and much reflection. I have not been able to perceive any reason to recede from the positions that the contrary doctrine is dangerous to the sovereignty and independence of the States, destructive to the peace and harmony of the Union, and ultimately subversive of the very end and aim contemplated by that enactment. I cannot discharge my duty without sgain affirming the conclusions to which I then arrived. I cannot hang my conceinence upon the suggestions or opinione dictated by the consciences of others. They must judge and act for themselves. So must I. I must be risibility to my trust, as others, doubtlees, are to theirs. But, believing, as I do, that Congress had

no power to pass the act of 1850, that the duties and obigations declared by the Constitution in that respect, by the 3d clause of Sec. 2, of Act 4 of the Gostitution, were imposed upon, the States, and all power in relation thereto, received to the States and the people, I am compelled to hold that the act is unconstitutional and void, and can confer no authority upon the Federal Courts.

This doctrine goes to the jurisdiction of the Court which attempted to try and sentence this petitioner, which jurisdiction is always subject to inquiry and decision in any other Court in which its proceedings may come in question, collaterally or otherwise. This is true of Courts of general original jurisdiction, and much more is it true in regard to the jurisdiction.

The 2d clause of the 9th section of the 1st article of the Constitution of the United States provides:

"The privilege of the writ of habers corpus shall not be suspended, unless when in case of rebellion or invision the public safety may require it." The insertion of this clause in the Constitution clearly indicates the extreme caution which was exercised by the nembers of the National Convention, and also the apprhension which they felt lest the power of the States might prove too much for that of the Federal Government. While, on the one hand, they obviously intended to leave to the State Governments the jurisdiction and control of this high prerogative writ, in all crdinary circumstances, and on all ordinary occasions, on the other they granted to Congress the power to empend its privileges whenever they should manifest an open rebellion against the Federal authority, or an invasion of the national or State territory. The suspension of the privileges of the writ, here referred to, could not be held as applying only to the power to empend its privileges whenever they should manifest an open rebellion against the Federal authority, or an invasion of the privileges of the writ, here referred to, could not be held as applying only to the power to the congress

Congress should declare the existence of the emergencies wherein it might and should suspend its privileges.

In view of this remarkable provision of the Constitution, it is not a little surprising that a claim is lately set up in behalf of Federal Officers, even of the lowest grade, of entire immunity from any obligation to regard the write when emanating from State authority, and that jurisdiction of this writ is pertly questioned by inferi ir ministerial officers, even when issued from the highest judicial tribunal of a sovereign State. However regardless a people may be of encroachments upon the power to which alone they have confided their liberties, it would seem that such pretensions, from such sources, could hardly fail to invite inquiry in regard not only to the rights of sovereignty originally reserved, but in regard to what yet reman, not yet frittered away by thought-less acquiercence on the one hand, or voluntary surrender on the other.

But it seems to me unnecessary to pursue this subject further. The whole tenor and scope of the Sederal Constitution, indicate most clearly that the State Judges and indeed all State officers, are essential to its maintenance and support, and accordingly the very last clause in the instrument requires such officers to be bound by oath or affirmation to support it. Yet the course of reasoning sometimes resorted to, in order to oust the State Judiciary of jurisdiction of a constitutional question, is based upon the assumption that State Judges must necessarily be reckless of such obligation, and that idelity to official duty is only to be expected from Federal officers. But this Jassumption that state Judges must necessarily be reckless of such obligation, and that idelity to official duty is only to be expected from Federal officers. But this Jassumption that state Judges must necessarily be reckless of such obligation imposes upon Federal power, and that they are willing, for the sake of "uniformity," to administer all power, both State and National. Neither assump

is, to accertain the true line of duty, and to act accordingly.

That errors upon both sides must necessarily be committed, is only admitting that the agencies by which each Government is administered are human. But those who suppose that error upon the one side or the other must necessarily lead to insurrection, revolution, and anarchy, have studied the temper of our people and officers to little purpose. Time reason, reflection, discussion, forbearance, partiotism, will now, as they have done heretofore, prove that the wisdom and intelligence of the parties interested, and especially of the ultimate suthority, will be found competent to the emergencies which call for their exercise, and equal to the fortune which may put them to the test.

ercise, and equal to the fortune which may put them to the test.

I agree fully with the course of reasoning of my brother Crawiord, upon the second branch of this case, viz., that the record of conviction here returned does not show an offense within the jurisdiction of the Federal Court, even admitting the Act of 1850 to be constitutional; and even on that ground alone I should agree to discharge the prisoner. I am permitted, and desire to adopt his course of reasoning in that respect, which is so clear and conclusive that further suggestions would be entirely superfluous. I will only say that whatever the Congress may have designed by the 7th section of the Act of 1850, such design can only be discovered from the words of the statute. If they failed to design at the offense as they intended to do, their defect cannot be supplied by any legislation of a judicial tribunal. By their own language must their exactment be construed, an Lif their guage must their exactment be construed, and if their intentions may be thwarted in consequence of ure accurately to express them, Congress has the came power to amend that it had originally to enact the statute.

I have deemed it my duty on this occasion to ex-

the statute.

I have deemed it my duty on this occasion to express my views upon a question which I deem vitat to the system on which our Government is based. The foundation of my action is broader and deeper than the mere purport of the indictment, though that alone would be sufficient for the present emergencies.

But the question suggests, and indeed upon the argument have been raised questions involving the powers of the Federal and State Governments; questions not confined to the particular subject matter of the Act of 1850, but questions pervading the entire scope of the two Governments, in all of their departments, upon other subjects which may, from time to time, arise. And firmly believing that the beneficent designs of the Union can only be realized, and the Union itself only preserved by maintaining the independence and sovereignty of the States intact, in all respects except where they have clearly delegated power, and by confining the Federal Government to powers clearly conferred, I have felt eriment to powers clearly conferred. I have felt called upon to place my views upon our records, in order that I may discharge my full duty, and that my reasons for the decision to which I have been im-pelled, may be fully known, and not misapprehended.

OPINION OF JUSTICE CRAWFORD.

In re the petition of John Rycraft to be discharged from illegal imprisonment.

Since the decision in the case of Sherman M. Booth, which came before us by certiorari, at the last Term of this Court, I have taken occasion to review the opinion given by me in that case, in order to discover whether I had erred in any of the positions there assumed by me.

whether I had erred in any or the periodic that assumed by me.

That opinion was written during the active duties of a General Term, and without an opportunity for very great deliberation. The result of my reexamination of that case, however, has produced no change in my views of it; and so far as the questions then presented are involved in the disposition of the disposition of the disposition of the disposition of the dispo

ferior or limited jurisdiction, which do not proceed according to the course of the common law, but derive their special authority from statutory provisions, are confiered strictly to the exercise of the powers conferred upon them, and the facts necessary to give them jurisdiction must appear affirmatively on the face of their proceedings, and cannot be presumed. It is not denied that this principle applies to all mere inferior tribunals, but that it extends to the Circuit and District Courts of the United States has been frequently denied by the Supreme Court of the United States.

cnit and District Courts of the United States has been frequently denied by the Supreme Court of the United States.

In Kempe's Lessee vs. Kennedy, (5 Cranch, 185,) that Court held that "the Courts of the United States are all of limited jurisdiction, and these proceedings are erroneous, if the jurisdiction be not shown upon them. Judgments rendered in such cases may certainly be reversed, but this Court is not prepared to say that they are absolutely nullities which may be totally disregarded." So also in McCormick vs. Sullivan, (10 Wheat, 199) the same Court, in speaking of the inferior Courts of the United States, say: They are all of limited jurisdiction, but they are not on that account inferior Courts in the technical sense of those words, whose judgments, taken slone, are to be disregarded. The same doctrine is illustrated and acted upon in at parte Tobias Warkins, (2 Peters, 193.) and in Kennedy et al. vs. Georgia State Bank et al. (8 How., 386) and the basis of the rule must be found in that presumption of jurisdiction which the law raises—that the solemn adjudications of a Court of Record have been given in cases only in which it had power to act. This presumption certainly applies to all Courts of general jurisdiction, and for the purposes of the present case, and in obedience to the decisions of the Supreme Court areasy cited, we may apply it to the District Court of the United States for this District; but if the record of judgment er proceeding in that or any other Court whatever, should come before us collaterally, and upon the face of the record, it was apparent that the Court had ro purisdiction to render any judgment in the premises, we would not and could not hesitate to disregard it; there the presumption in favor of the valicity of the proceedings would be destroyed, and the judgment would have no force. Suppase, for instance, that a judgment record, coming from a Court of therwise, the Court had proceeded ex parte, and rendered a judgment against the defendant, surely we would be justified

dered a judgment against the defendant, surely we would be justified in treating the proceedings as coram non judice.

Now, the return made by the Sheriff of Milwaukee County in this case, contains a record of the proceedings in the District Court, in which this relavor was convicted and sentenced, which not only takes a way mere presumption but incontestibly, shows, that the District Court had no jurisdiction of the subject complained of in the counts of the indictment upon which he was convicted; and if this position be true, we may appropriately use the larguage of Judge Evans in the case of Hill vs. Robertson, it Strobhart's Law R. 1. "It would be a waste of words to attempt to prove, that the proceedings of a Court of limited jurisdiction, in a case clearly without its jurisdiction, are "absolutely void, and may be so declared whenever the question is presented, whether directly or collaterally."

The indictment upon which this relator was tried and convicted in the District Court, contained three counts the first of which may be considered as properly charging an offense within the seventh section of the Act of Congress of Sept. 18, 1850, known as the Fugitive Slave Law. The second and third counts, however, do not, in my opinion, set forth or charge an offense punishable by any statute of the United States, or of which the District Court has any jurisdiction whatever.

The relator was found guilty as charged in the fast count, so that if the counts on which the conviction took place do not show a case within the jurisdiction of the Court, the conviction and sentence are not only unautherized by law, but are coram non judice.

The relator was founded in the first count, so that if the counts on which the conviction took place do not show a case within the jurisdiction of the Court, the conviction and sentence are not only unautherized by law, but are coram non judice.

The second count charges that "John Rycraft, of, &c. at & c. on, &c. knowingly and wilfully did aid, "abet and assist one Joshua Gilover t

court, the conviction and sentence are not only unautherized by law, but are coram non judice.

The second count charges that "John Rycraft, of, "Ac. at &c., on, &c. knowingly and wilfully, did aid, "abet and assist one John a Glover to escape from the "custedy of Chas. C. Cotton, then and there being a "ceputy of the Marshal of the United States for the "District of Wisconsin, he, the said Joshna Glover, "having been theretofore apprehended by, and then "and there being in the custedy of, the said Cotton," &c. The count then proceeds to recite the warrant by virtue of which said Glover was apprehended, and which had been issued by the Hon. Andrew G. Miller, Judge of the District Court of the United States. From the recitals contained in the warrant ret forth in the indictment, we find that a complaint had been made before Judge Miller, by a person claiming that said Glover owed service and Isbor to him, the claimant, according to the laws of the State of Missouri, and that upon that complaint the warrant had issued against Glover as a fugitive slave.

The third count is substantially the same as the second, the principal difference being that it recites the sfift avit of the claimant as well as the warrant issued by the District Judge.

The intention, no doubt, was to set forth in each of these counts an offense within the seventh section of the Act of 1850; but in my view of them, they merely charge an adding, abotting and assisting a person named Glover to except from the custody of Mr. Cotton, a Deputy of the Marshald of the United States. Who is this Glover thus aided? For if it be not shown that he is within the description of person, the aiding in the escape of whom is declared to be an offense, then so far as the Act of 1850 is concerned, these counts charge no offense.

The seventh section provides for the punishment of any person who shall knowingly and wilfully "aid," abet and assist such person, so owing service and labor to any person who shall knowingly and wilfully "aid, ber an aforesaid, directl

"Ac."

Now, it is not the aiding any person to escape which is here provided for, but it is the aiding of a person of a specified status or condition, to wit, one who owes service or labor as aforesaid, and these words most evidently refer back to the commencement of owes service or labor as aforcand, and these words most evidently refer back to the commencement of the eixth section, where we find the person described as one "held to service or labor in any State or Fer"ritory of the United States." This is the only reasonable construction which I can place upon the languege of this section, for certainly the assisting of a
person not owing service or labor in any State or
Territory would not come within this section. Suppose a person, undoubtedly a free man, were in custody, on claim under this law, and without the use of
any force or violence he was assisted to escape, how
could it be said that the aid had been rendered to a
person "so overing service and labor!" To constitute
an offense under this, as under any statute, every circumstance necessary to an exact description of the
offense, as defined by the statute, must be critically
set forth, and the application of this rule to the counts
of this indictment, would require that the man Glover
should have been described as a person owing service
or labor in some State or Territory. By no principle
of law we can infer, from the words used in these counts,
that Glover owed service or labor—on the contrary,
we are bound to suppose that Joshua Glover was
qually as free as any other person. If he had been
in the custody of the officer, for the violation of some
other law of Congress than the Act of 1850, the aidirg him to escape would not be an offense within
that Act. But from the legitimate averments of
these counts, I cannot find a description of any offense for which Glover was in custody—and the
eronames of the charge is merely that the relator
aided Glover to escape from the custody of the Deputy-Marshal Cotton, which custody was by virtue of
process.

The twenty-second section of the act of Congress

process.

The twenty-second section of the act of Congress The twenty-second section of the act of Congress approved April 30, 1790, defines the offense of resisting or obstructing efficers of the United States in the serving of process. The language of that Act is, "obstatute, resist, or oppose any officer of the United States, in serving, or attempting to serve of the Court of the United for order of any of the Courts of the United States."

"cute any meane process or warrants, or any rule "or order of any of the Courts of the United "States," Acc.

The distinction, in my judgment, between the ingredients of the offense of obstructing and hindering an officer in the service of process under the Act of 1790, and the offense of adding, abeting and assisting a person in legal custody to escape therefrom, (if the latter be really declared to be an offense,) consists in this: that in the fermer some active interference of the person charged is necessarily involved, while in the latter the end or object may be attained—the aid and assistance afforded, without any connection with or bindrance of the officer or his process. A person in passing beneath the window of a room in which a prisoner is confined, in custody of the Marshal, might east a key through the open bars or casement, and thereby enable the captive to withdraw the bolts of his prison, and escape, but, although this would be a grave offense, l'apprehend it could not bring the offender within the Act of 1790. It would be an aiding and abetting in an escape, but it could hardly be deemed an obstructing or bindering the offense in the service or execution of process.

The indictment preferred against the relator, however, contained one count (the first) which charged an offense within the jurisdiction of the District Court, and the question whether, inasmuch as that Court had jurisdiction to try the offense charged in the first count, in the indictment it did not thereby acquire a control of the whole case and preclude any inquiry into its power here, has esnaged any attention. I am not, upon this writ of habeas corpus, inquir-

ing into a mere question of criminal pleadings—the inquiry is one affecting the jurisdiction and power of the Court, which extertained the indictment before us, and proceeded to verdict and judgment thereos. I am entirely satisfied, that if the Jury had returned a general verdict of guilty on this indictment, the interference of this Court with the sentence of the intrict Court of the United States would have been wholly unwarrantable; because, in that case, there would have been a conviction for an offense within the power of the District Court to try, determine and pursh. But the record which constitutes the mittinus before us, shows that the indictment upon which this relator was tried contains one count for an offense within the jurisdiction of the Court which tried him, and two counts presenting no crime for which a per-

inus before us, shows that the indistment upon which this relator was thied contains one count for an offense within the jurisdiction of the Court which tried him, and two counts presenting no crime for which a person could be tried in that Court. Upon the first count there has been no conviction, and consequently there can be no punishment; so that the sentence and imprisonment of which the relator now complains, must be for an alleged offense beyond the control or cognizarce of the Court which imposed that sentence.

If, in the District Court, an indictment were presented, some of the counts of which charged a violation of the reverue laws of the United States, and other counts charged libel, or assault and battery, and upon trial a conviction were obtained on the counts charging libel, or assault and battery, would an imprisemment on such a conviction, where the charge of violating the United States revenue laws had not been sustained by the verdict, be beyond the inquiry of this Court?

Would the conjection and sentence in such a case, be the "final judgment" of a Court of competent criminal invisidation of the offense of which the party was convicted, or would the imprisonment consequent on such a sentence be "by virtue of process issued by any Court or Judge of the United States, in a "case where such Court or Judge has exclusive jurisdiction?" I cannot think so.

Whenever, in a case like the present one, a writ of habeas corpus issues, directed to a Federal officer, and he makes a proper return setting forth the cause or process by which the party is restrained of his liberty or custined, I conceive it to be the duty and within the legitimate power of this Court, or the officer, then the legitimate power of this Court, or the officer who has a sight be issued by the tributaal or officer who issued the writ of habeas corpus, to remain the party but if, on the courtary, the process or warrant for the imprisonment be unauthorized, or the subject matter upon which the party has been depived of his liberty, b

ognizance of the Court or officer who has assumed o act, then it is equally incumbent on us to discharge the party.

The Constitution of this State (art. 1, sec. 8) secures to every person within the State the privilege of the writ of habeas corpus, and the use of that writ is adapted to all cases of the art as well as judicial officers of the State, who are vested with the power of awarding this writ, would be recreant to the duty imposed upon them, and to the trust reposed in them by the people, if in any case of illegal restraint, in which they have power to act, they hesitated to perform the requirements of the Constitution and iswe of the State, by using this writ as a means to see that no person within the boundaries of this State shall be deprived of his personal liberty without the authority of law. If this were not so, the utility of the writ of habeas corpus would not only be greatly invaded, but in many instances it would become a name without a substance. It is idle to say that the use of the writ to this extent may be productive of dangerous consequences, or result in any serious collision between the Federal and the State officers. So long as the functionaries of these respective powers are true to the obligation and duties imposed upon them, so long as they are careful not to transcend the limits and scope prescribed to them, there is no danger to be apprehended. If either, indeed, should assume to act in derogation of the prerogative of the other, a means of correcting the evil would be very necessary; but we are not without that corrective. An unwarrantable infraction of the prerogative of the other, a means of cedress is afforded by a resort to the Court of dermire resort—the Supreme Court of the United States—whose decisions should and would be acquiesced in by all parties.

Viewing this case as it is presented by the return, I am of the decisions thould and would be acquiesced in an assertion of the originion that the relator is entitled to be dis-

—whose decisions should and would be acquiesced in by all parties.

Viewing this case as it is presented by the return, I am of the opinion that the relator is entitled to be discharged from the custody of the Sheriff of Milwaukee County, inasmuch as the record of conviction and sentence from the District Court of the United States for this District, by which his imprisonment is sought to be justified, presents no conviction and sentence of an offerse which that Court had jurisdiction over.

On the argument of this case the counsel for the relator insisted upon a distinct ground for the discharge.

It was, that the Act of Sept. 18, 1850, was entirely unconstitutional and void. A correct understanding of the views of that question, taken and expressed by the several members of this Court at the last Term, would perhaps have rendered it unnecessary to urge this point in the present case. I need only remark that upon this question we each entertain the opinion then expressed.

The case of Sherman M. Booth, which was argued and considered in connection with this case, is substantially disposed of in the foregoing opinion. The defect of jurisdiction in the U. S. District Court is equally patent in his case, and therefore I believe he is entitled to be released from imprisonment.

MR. RURNS AND MR. CURTIS.

To the Editor of The N. Y. Tribune.

Sin : The following letter, from Mr. Thomas Curtis, appears in The Boston Daily Advertiser of this morning. He and his brother, Mr. C. P. Curtis, are entitled to the benefit of the facts stated in it. It is proper, however, to add that having become, a they had, fully aware of the deep and general indig nation occasioned by the arrest of Mr. Anthony Burns-Mr. Thomas B. Curtis may sneer at it, but why not say Mr. Anthony Burns as well as Mr. Thos. B. Curtis?—they might well be alarmed, as well as Mr. E. G. Parker, one of the attorneys for the claimant, and an active person in getting up the subscrip-tion, at the idea of his being taken away from Boston; and might well be willing to pay \$500, or twice that amount, in order to prevent it. Looking at it in a mere money light, the 'extendition' of Mr. Burns is likely to cost the Curtis family a much larger sum.

I am, 4c.,

A CITIZEN OF BOSTON. I am, &c., Ecston, Feb. 8, 1855.

P. S .- Mr. Curtis states, in his letter, that the prohibition by law of the transaction of business on the Lord's Day prevented the ransom of Burns. I know that our Supreme Court has held that, under the Lord's Day prevented the ransom of that our Supreme Court has beld that, under the Massachusetts Sunday laws contracts made on the Lord's Day are void—a secision which, in my opinion, brings the Sunday laws into direct conflict with that clause of the sonstitution of the United States which forbids the States to make laws impairing the obligation of contracts. But it seems to me that this matter of the ransom of a man from the hands of the kidnappas might, even in the opinion of our Supreme Court, lave come under the exception, which I suppose they would make, of cases of necessity and mercy. Would not the case of pulling a sheep out of a pit, of a Sunday, have been in point! But I will detain you no longer from Mr. T B. Curtis's agreeable epistle, who, at all events, vindicates by it his claim to the character not merely of a man devoted to the Union, but also of a man of feeling.

To the Editors of The Beston Daily Advertion:

his claim to the character not merely of a man devoted to the Union, but also of a man of feeling.

To the Editors of The Boston Daily Adecrifer:

I have recently been made aware that my name and some acts of my life have contributed to furnish a theme for several edumes of abuse in The New York Trimun, and er the signature of "A Chizzon of Boston," whose taste in the choice of his vehicle I will not question. I am quite sure there is no fellow townsam of mine base enough to make sech an attack anony mounly—it bears the stamp of another place, and was written to prejudice the cause of persons connected with me by the ties of kindred and friendship. Some of the charges against me will, by many good citizens here and slewwhere, be deemed among the most meritorious acts; but that which en hilbit the malignity of the authors, as well as their failed of is stributing to me the title of "Kidnapper," and an endeavor to hold me up to score in that relation to "Mr. Buras," whe had the misfortune to escape from servinude and to be returned to his owner from this city. The author who treats of me and my tennily relations, must have had extraordinary opportunities of knowing all shout us, but sedulomly avoids asying a word that could by any means extenuate the charge against us kionspera. Knowing us as intimately as he has shown hirself to have done, it is impossible that he should have been ignorant that at the eventful period of the trial of Burne, on Saturday, May 27, I was called upon by the Rev. Mr. Grimes with a statement that Cal. State had agreed to manumit the slave upon payment of \$1.300. He had with him a subscription paper headed by Mr. Chas. P. Curtis with \$100, and left me with the addition of a similar amount. We take no poculiar credit that these names should appear, or that Mr. Grimes should have afforded as the opportunity of feeling the slave, or that he had called upon us in previous cases; but when atigmatized as hard-hearted kidnappers, saddy exising upon the opportunity of consigning a fellow mortal